

Adulteration of the article was alleged in the libel for the reason that a substance, to wit, screenings, had been substituted wholly or in part for the said article.

Misbranding was alleged for the reason that the designation "Ingredients Oats," appearing on the labels was false and misleading, and the words "Other Grains" did not correct the misleading impression conveyed. Misbranding was alleged for the further reason that the article was offered for sale under the distinctive name of another article, to wit, "Bleached Crescents Ingredients Oats, Barley, and Other Grains," whereas, in truth and in fact, the article contained screenings bleached with sulphur dioxide.

On June 6, 1924, S. Zorn & Co., Louisville, Ky., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$300, in conformity with section 10 of the act, conditioned in part that the article be relabeled "Bleached Crescent Grain Screenings."

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12379. Adulteration of canned salmon. U. S. v. 182 Cases of Canned Salmon. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 13063. S. No. W-631.)

On July 1, 1920, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 182 cases of canned salmon remaining in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped from Brooklyn, N. Y., December 29, 1919, and transported from the State of New York into the State of Washington, and charging adulteration in violation of the food and drugs act. The article was labeled in part: "Hall's * * * Par-Valu Brand * * * Red Alaska Salmon."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal substance.

On April 7, 1924, the Alitak Packing Co., Seattle, Wash., claimant, having admitted the allegations of the libel and consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$365, in conformity with section 10 of the act, conditioned in part that it be sorted under the supervision of this department, the good portion delivered to the claimant, and the bad portion destroyed.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12380. Misbranding of meat meal. U. S. v. Howard R. Norton (Norton & Co.). Collateral of \$50 forfeited. (F. & D. No. 18472. I. S. Nos. 732-v, 10591-v.)

At the April, 1924, term of the Supreme Court of the District of Columbia, holding a police court, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the district court aforesaid an information against Howard R. Norton, trading as Norton & Co., Washington, D. C., alleging that on or about July 26, 1923, the said defendant did offer for sale and sell within the District of Columbia in violation of the food and drugs act a quantity of meat meal, and that on or about November 21, 1923, the said defendant did ship from the District of Columbia into the State of Maryland in violation of said act a quantity of meat meal, all of which was misbranded. A portion of the article was labeled in part: "100 Lbs Good Luck Meat Meal Guaranteed Analysis Protein 55%." The remainder of the said article was labeled in part: "100 Lbs High Grade Meat Meal Guaranteed Analysis Protein 55% * * * Manufactured by Norton & Co. Washington, D. C."

Analyses of a sample from each of the lots by the Bureau of Chemistry of this department showed that the said samples contained 52 per cent and 48.08 per cent, respectively, of crude protein.

Misbranding of the article was alleged in the information, for the reason that the statement, to wit, "Guaranteed Analysis Protein 55%," borne on the sacks containing the article, regarding the said article and the ingredients and substances contained therein, was false and misleading in that the said statement

represented that the article contained not less than 55 per cent of protein, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 55 per cent of protein, whereas, in truth and in fact, it did contain less than 55 per cent of protein, the said lots containing approximately 52 per cent and 48.08 per cent of protein, respectively.

On June 9, 1924, the defendant having failed to enter an appearance, the \$50 collateral which had been deposited by him to insure his appearance was declared forfeited by the court.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

12381. (Supplement to Notice of Judgment 11442.) Adulteration of canned salmon. U. S. v. 1,974 Cases of Canned Salmon. Tried to the court and a jury. Verdict for the Government. Decree of condemnation and forfeiture. Product released under bond to be sorted. (F. & D. No. 14262. I. S. No. 10533-t. S. No. W-847.)

On March 13, 1924, the case involving the shipment of 1,974 cases of Hypatia brand pink salmon from the Territory of Alaska into the State of Washington, which had been remanded by the Circuit Court of Appeals for the Ninth Circuit to the United States District Court for the Western District of Washington, came on for retrial before the court and a jury. After the submission of evidence and arguments of counsel the court delivered the following instructions to the jury (Cushman, D. J.):

"The arguments in the case having been concluded, gentlemen of the jury, it is the Court's duty to instruct you regarding the law.

"The plaintiff has filed a libel in this case, seeking to have condemned this parcel of salmon. In that libel it is alleged that this parcel of salmon was shipped in interstate commerce and that it was an adulterated food. It is alleged in the libel that it consisted in whole or in part of filthy, decomposed animal substance. The claimant has denied that it was adulterated or that it consisted in whole or in part of filthy, decomposed, or putrid animal substance. These are the issues that you are to try. There is no dispute here, as I understand, regarding its having been transported in interstate commerce. You understand this case is here because of that allegation. If this had been a shipment wholly within the State of Washington, this court would not have been concerned with it, because no Federal law would have been involved.

"This law provides for the condemnation of adulterated foods, and adulteration is defined, in substance, that an article of food is adulterated when it consists, in whole or in part, of filthy, decomposed, or putrid animal substance making it unfit for food.

"There has been in this case much said, in argument and in the testimony, regarding decomposition. There has been evidence in this case that decomposition begins when life ends. Fish is not decomposed, within the meaning of this law, at that early stage. To be decomposed within the meaning of this law means more than the beginning of decomposition; it contemplates a state of decomposition making the article unfit for human food. It does not have to be so decomposed that it has disintegrated and passed to its original elements, because the statute says a decomposed animal substance. Well, when it is entirely decomposed and has passed into its original elements, it has ceased to be an animal substance. All works of man and all that lives eventually becomes so decomposed that it is broken up and separated and the atoms which once composed it mingle again with the earth or the air or the sea. It is not in this sense that the word 'decomposed' is used in this statute.

"The evidence in this case has taken a wide range. Counsel in their arguments have not been at all restricted. You understand that you are to pass upon the questions of fact in this case, including this question of the extent of decomposition and whether these samples and this lot of salmon, this parcel of salmon, is unfit for human food. Those are questions of fact for your sole determination, and if the Court in the course of its instructions or in the course of the trial has said anything touching the weight of evidence on these questions of fact, or stated any question of fact that is submitted to you for your determination, you should disregard any such statements of the Court, unless they agree with the conclusions reached by yourselves. On the other hand, so far as counsel in their arguments have stated what the law was, if they have stated the law to be different in any respect from what the Court instructs you, you will disregard their statements concerning the law and follow the instructions which the Court gives you regarding the law. As